

EXHIBIT A IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

Eric R. Glitzenstein (D.C. Bar No. 358287) (admitted pro hac vice)  
MEYER GLITZENSTEIN & EUBANKS LLP  
4115 Wisconsin Ave., N.W., Suite 210  
Washington, D.C. 20016  
Telephone: (202) 588-5205  
Facsimile: (202) 588-5049  
[Eglitzenstein@meyerglitz.com](mailto:Eglitzenstein@meyerglitz.com)

Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION**

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

v.

RYAN ZINKE, Secretary, U.S. Department of the  
Interior, *et al.*,

Defendants.

No. 3:18-cv-00359-MO

DECLARATION OF  
NOAH GREENWALD

**DECLARATION OF NOAH GREENWALD**

I, Noah Greenwald, declare as follows:

1. I am a member of and the Endangered Species Director at the Center for Biological Diversity (“the Center”), a Plaintiff in this case. I am submitting this declaration in support of Plaintiffs’ Motion for Summary Judgment.

2. The Center is a nonprofit organization committed to the preservation, protection, and restoration of native species and the ecosystems upon which they depend through science, policy, education, and environmental law. The Center has offices throughout the United States, including in Arizona, the District of Columbia, New Mexico, California, Alaska, Minnesota, Vermont, Florida, Oregon, and Washington. The Center has more than 63,000 members and over 1.6 million online supporters.

1           3.     The Center believes that the welfare of human beings is deeply linked to  
2 nature and to the existence in our world of a vast diversity of wild animals and plants.  
3 Because diversity has intrinsic value, and because its loss impoverishes society, the  
4 Center works to secure a future for all species, great and small, hovering on the brink of  
5 extinction through science, law and creative media, with a focus on protecting the lands,  
6 waters and climate that species need to survive. The Center strives to protect its  
7 members' and supporters' recreational, aesthetic, scientific and educational interests in  
8 protecting and preserving imperiled species and biological diversity for future  
9 generations through its numerous organizational programs.<sup>1</sup>

10           4.     One such program, the Center's Endangered Species Program, which I  
11 oversee, is specifically focused on: compiling and analyzing data about species status and  
12 recovery; submitting legal petitions and preparing reports, filing lawsuits when necessary,  
13 using the leverage of our supporters' voices and ensuring that imperiled species are  
14 federally protected; obtaining adequate amounts of critical habitat for species; advocating  
15 for sound conservation policy; watchdogging Congress and government agencies; and  
16 using creative media to keep the Center's members informed and engaged.<sup>2</sup> The  
17 Center's Endangered Species Program has been more successful than all other U.S.  
18 conservation groups *combined* in achieving first-time protection (i.e., listing) under the  
19 ESA for imperiled plant and animal species.<sup>3</sup>

20           5.     To that end, the Center systematically and ambitiously uses biological data,  
21 legal expertise, and the Endangered Species Act's ("ESA") citizen petition process to  
22 obtain sweeping, legally binding new protections for imperiled animals, plants, and their  
23 habitat. The Center has achieved ESA protection for hundreds of species as a result of its  
24 groundbreaking petitions, lawsuits, policy advocacy, and outreach to media. The Center  
25

---

26 <sup>1</sup> See <http://www.biologicaldiversity.org/programs/>.

27 <sup>2</sup> See <http://www.biologicaldiversity.org/programs/biodiversity/index.html>.

28 <sup>3</sup> *Id.*



1 employs a full-time staff of dozens of prominent environmental lawyers and scientists  
2 who work exclusively on its campaigns to save species and the places they need to  
3 survive. Additionally, the Center disseminates scientific and educational information in  
4 its various publications, including *Endangered Earth Online*, a weekly e-newsletter, as  
5 well as periodic reports detailing the current threats to imperiled species and biodiversity  
6 as well as the success stories of recovered and recovering species.<sup>4</sup>

7         6. One of the imperiled species on which the Center has spent many years and  
8 devoted significant resources is the streaked horned lark (hereafter the “Lark”). Indeed,  
9 without the Center’s longstanding advocacy the Lark would not have gained any  
10 protection under the ESA. In 2002, the Center submitted the formal listing petition that  
11 ultimately led to the Lark’s listing. The petition detailed the extensive contraction of the  
12 Lark’s historic range, the ongoing loss and degradation of the Lark’s habitat, and the  
13 myriad threats to its continued existence. Although the FWS agreed with the Center that  
14 listing of the Lark was warranted—and that it faced “imminent threats of a high  
15 magnitude”—the Service took no concrete action towards listing until the Center sued the  
16 agency for failing to make ESA listing decisions concerning the Lark and many other  
17 imperiled species in a timely fashion. In settling that lawsuit, the FWS agreed to be  
18 bound by enforceable deadlines for making proposed and final listing decisions for the  
19 Lark. *See In re Endangered Species Act Section 4 Deadline Litigation*, No. 1:10-mc-  
20 00377-EGS, ECF No. 42-1 (Stipulated Settlement Agreement) (July 12, 2011 D.D.C.).

21         7. In 2012, the FWS proposed listing the Lark as a threatened rather than an  
22 endangered species, and also proposed an expansive “special rule” pursuant to section  
23 4(d) of the ESA that would broadly authorize the killing and other forms of “take” of  
24 Larks associated with agricultural and other activities. In response, I submitted extensive  
25 comments on behalf of the Center. I explained that the Lark’s dire status in Washington  
26 along with evidence of the Lark’s decline and inadequate protection in the Willamette  
27

---

28 <sup>4</sup> See <http://www.biologicaldiversity.org/publications/>.

1 Valley in Oregon strongly supported listing the Lark as endangered. My comments on  
2 behalf of the Center's also explained that the proposed section 4(d) rule was not a  
3 "conservation" rule within the meaning of the ESA, including because it would not help  
4 to recover the Lark on agricultural (or other) lands but, rather, would merely maintain the  
5 same practices that have resulted in the Lark's precipitous decline.

6 9. The longstanding interests of the Center and its members in conserving the  
7 Lark and its habitat are gravely injured by the FWS's refusal to list the Lark as an  
8 endangered species and its adoption of a 4(d) rule that contains no conditions for  
9 minimizing adverse impacts to Larks during the breeding season. In particular, we are  
10 harmed by the FWS's failure to provide fairly modest but critical protections for the Lark  
11 during the nesting season. Like many ground nesting birds, which are in widespread  
12 decline across North America, the lark is vulnerable to plowing, mowing, and other  
13 activities that crush or disturb nests. Identifying and protecting small areas around nests  
14 during the short period of time the birds are on the nest would go a long way to helping  
15 the species recover, as such measures have for other threatened or endangered birds.

16 10. The Center has an office in Portland, Oregon, and members, board  
17 members, and staff of the Center reside in the Pacific Northwest and regularly seek to  
18 observe the dwindling population of Larks in the Washington and Oregon portions of the  
19 subspecies' range. Thus, the FWS' refusal to list the Lark as endangered and the  
20 Service's adoption of a broad 4(d) rule that does nothing to arrest the Lark's decline  
21 harms the Center's members', board members', and staff's educational, scientific,  
22 aesthetic, and recreational interests in observing the Lark in Washington and Oregon as  
23 the Lark dwindles in numbers and becomes increasingly difficult to see and enjoy. The  
24 Service's actions also greatly increase the likelihood that the Lark will become extinct,  
25 which poses an existential threat to the interests of the Center's members, board  
26 members, and staff in the Lark.

27 10. As detailed above, for much of the past two decades the Center has  
28 expended substantial organizational resources in attempting to obtain needed ESA



1 protections for the Lark, on behalf of the Center's members, board members, and staff.  
2 The FWS's refusal to list the Lark as endangered and adoption of a 4(d) rule that fails to  
3 conserve the Lark means that the Center has had to, and will continue to have to, spend  
4 additional resources that would not otherwise have been necessary, including in  
5 monitoring the Lark's status, educating the public and policymakers concerning the  
6 Lark's inadequate protection notwithstanding its listing under the ESA, working with  
7 Lark experts to devise measures for conserving the species, and advocating for essential  
8 safeguards that the Lark continues to lack due to the Service's inadequate protection  
9 under the ESA. The resources that the Center must continue to spend on the Lark as a  
10 direct result of the FWS's refusal to afford the Lark the protections it needs and to which  
11 it is legally entitled are resources that the Center will be unable to spend on other critical  
12 components of its mission to prevent extinctions and save the nation's biodiversity for  
13 future generations.

14 11. As noted, I am a member of the Center as well as an employee of the  
15 organization. I became a member because the Center is in my view the most effective  
16 organization in the country working on biodiversity issues and I have a longstanding  
17 personal and professional interest in saving imperiled species from extinction and  
18 bringing about their recovery. In particular, I have aesthetic, recreational, professional,  
19 and scientific interests in the Lark. I first viewed the streaked horned lark on August 28,  
20 2015, on Livermore Road on the Baskett Slough National Wildlife Refuge on a trip to see  
21 them with Bob Altman (who is one of the leading experts on the species and was the  
22 FWS's hand-picked peer review on the listing rule). The Baskett Slough Refuge is in the  
23 Willamette Valley in Oregon. On this trip we were fortunate enough to observe two  
24 Larks in a patch of what appeared to be native vegetation surrounded by farm fields. I  
25 had previously looked for streaked horned larks on Port of Portland land in north Portland  
26 and I have since looked for them in north and northeast Portland on multiple occasions  
27 while birding. I regularly engage in birdwatching in Oregon and Washington and will  
28 continue to make regular efforts to observe Larks in the future. I anticipate doing so at

1 least once a year. As a result, my personal as well as professional interests in the Lark are  
2 significantly impaired by the FWS's refusal to list the Lark as endangered and adoption  
3 of a 4(d) rule that paves the way for the Lark's further decline towards extinction rather  
4 than helping to recover the Lark as required by the law. The FWS's actions mean that my  
5 ability (along with that of other members of the Center) to see and enjoy the Lark in the  
6 future have been greatly diminished and that a Court order requiring the Service to revisit  
7 these decisions is critical to my future enjoyment and appreciation of this unique bird that  
8 exists only in the Pacific Northwest.

9  
10 Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the  
11 foregoing is true and correct to the best of my knowledge and belief.

12  
13 Dated: October 9, 2018

14  
15 **Noah Greenwald**

Digitally signed by Noah Greenwald  
DN: cn=Noah Greenwald, o=Center for Biological  
Diversity, ou=Endangered Species Program,  
email=ngreenwald@biologicaldiversity.org, c=US  
Date: 2018.10.09 10:40:45 -0700

16  
17 Noah Greenwald  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28